Supreme Court, U.S.
FILED

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NO.

IN THE SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

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ROBERT HEIDISCH,
PETITIONER
vs.
FORD MOTOR COMPANY,
RESPONDENT

---

ON PETITION FOR A WRIT OF CERTIORARI
TO THE SIXTH CIRCUIT COURT
OF APPEALS

---

# PETITION FOR WRIT OF CERTIORARI

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ROBERT HEIDISCH
Petitioner
600 21st Pl E
Bradenton, FL 34208
(941) 749-1058

34pp

## QUESTIONS PRESENTED

1. WHY THE UNITED STATES SIXTH CIRCUIT COURT OF APPEALS DID NOT RULE ON FORD MOTOR COMPANY'S MOTION TO STRIKE PLAINTIFF'S BRIEF DATED NOVEMBER 5, 1997?

2. WHY FORD MOTOR COMPANY DID NOT PROVIDE PERSONNEL RECORDS AS REQUESTED BY PETITIONER?

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## CITATION OF OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS AND ORDERS

Order of August 14, 1998, Sixth Circuit Court of Appeals, Case #97-1879.

Judgment for Defendant dated August 5, 1997, United States District Court, Eastern District of Michigan, Southern Division, Case #96-CV-73677-DT.

Order Granting Defendant's Motion for Reconsideration dated August 5, 1997, United States District Court, Eastern District of Michigan, Southern Division, Case #96-CV-73677-DT.

Order Granting in Part and Denying in Part Defendant's Motion for Summary Judgment dated June 12, 1997, Eastern District of Michigan, Southern Division, Case #96-CV-73677-DT.

## STATEMENT OF JURISDICTION

On August 14, 1998, the Sixth Circuit Court of Appeals entered an Order affirming the district court's judgment granting Defendant-Appellee's motion for summary judgment.

No order respecting rehearing has been entered.

This matter does not involve a cross petition for a writ of certiorari.

28 USC Section 1254 provides that cases in the courts of appeals may be reviewed by the Supreme Court by writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

## CONSTITUTIONAL PROVISIONS AND STATUTES

Plaintiff-Appellant appealed a judgment from the district court of the Eastern District of Michigan to the Sixth Circuit Court of Appeals pursuant to 42 USC 12101-12213.

Pursuant to Article 3, Sec.2, cl.2 of the United States Constitution, the judicial action of all inferior courts established by Congress may be, in accordance with the Constitution, subjected to the appellate jurisdiction of the supreme judicial tribunal of the government.

## STATEMENT OF THE CASE

On May 23, 1994, Petitioner asked for a meeting with John Smith, Ford Motor Company's Labor Relations Representative, in regard to a Ford supervisor calling Petitioner a "project".

On November 5, 1997, Ford Motor Company's counsel submitted a Motion to Strike Plaintiff's Reply Brief of October 31, 1997 saying that a variety of stories were not part of the record on appeal.

## ARGUMENT

As to question 1, at the meeting requested on 5/23/94, Petitioner requested his personnel records pursuant to the Employee Right to Know Act (ERKA); MCLA 423.501. Petitioner also has his request on tape recording.

As to question 2, the United States District Court for the Eastern District of Michigan and the Sixth Circuit Court of Appeals had documentation as to the dates and times these events occurred and that Ford Motor Company violated Petitioner's rights by not turning over personnel records.

## CONCLUSION

The Petition for Writ of Certiorari must be granted.

ROBERT HEIDISCH
600 21st Pl E
Bradenton, FL 34208

STATE OF FLORIDA )
) -ss-
COUNTY OF MANATEE )

ROBERT HEIDISCH, being first duly sworn deposes and says that he is the person who executed the foregoing instrument, that he has read the same and knows the contents thereof, that the matters stated therein are true to his knowledge, except such matters as are stated to be upon information and belief and as to those matters he believes them to be true.

ROBERT HEIDISCH

Subscribed & sworn to before me
this 5 day of February, 1999

Notary Public, Manatee County, Florida
My commission expires:

Pamela J. Shumate
MY COMMISSION # CC702529 EXPIRES
January 21, 2002
BONDED THRU TROY FAIN INSURANCE, INC.

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App. A

OPINION OF THE SIXTH CIRCUIT
COURT OF APPEALS

No. 97-1879

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

| | | |
|---|---|---|
| ROBERT HEIDISCH, | ) | |
| | ) | |
| Plaintiff-Appellant, | ) | |
| | ) | ORDER |
| v | ) | |
| | ) | |
| FORD MOTOR COMPANY, | ) | |
| | ) | |
| Defendant-Appellee. | ) | |

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION
Sixth Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court.
This notice is to be prominently displayed if this decision is reproduced.

Before: KEITH, BATCHELDER, and COLE, Circuit Judges.

Robert Heidisch appeals a district court grant of summary judgment for defendant in this employment discrimination action filed under the Americans With Disabilities Act (ADA), 42 U.S.C. 12101-12213. This case has been referred to a panel of the court pursuant to Rule 9(a), Rules of the Sixth Circuit.

Upon examination, this panel unanimously agrees that oral argument is not needed. Fed.R.App.P. 34(a).

Heidisch filed his complaint in the district court alleging that he was subjected to discrimination and harassment in his employment with defendant because of a disabling condition, carpal tunnel syndrome. Plaintiff sought money damages and any other relief deemed appropriate. Defendant moved for summary judgment, and plaintiff responded in opposition. The district court granted defendant's motion in part and denied the motion in part, and defendant moved for reconsideration of the partial denial of its motion. The district court granted the motion for reconsideration, and granted summary judgment for defendant in toto. This timely appeal followed. On appeal, plaintiff contends that: (1) he was improperly reclassified to a "cleaner" position from his "assembly" position following his return to work after the onset of his carpal tunnel syndrome; and (2) he was not given an opportunity to perform any "assembly" job after the improper reclassification was corrected. Defendant responds that: (1) the harassment cited by plaintiff was minimal and unrelated to his disability; and (2) plaintiff is not a "qualified individual" under the ADA.

Upon de novo review, see Brooks v. American Broad. Cos., 932 F.2d 495, 500 (6th Cir. 1991), we affirm the district court's judgment for the reasons stated by the district court in its order filed

June 12, 1997, granting defendant's motion for summary judgment in part, and in its order filed August 5, 1997, granting defendant's motion for reconsideration. Essentially, plaintiff did not meet his burden of showing that he is otherwise qualified for an assembly position despite his disability. See Monette v. Electronic Data Sys. Corp., 90 F.3d 1173, 1186 (6th Cir. 1996). Nor did plaintiff establish a prima facie case that he was subjected to harassment because of his disability. See Harris v. Forklift Sys., Inc., 510 U.S. 17, 21-23(1993). Under these circumstances, the district court properly granted summary judgment for defendant.

Accordingly, the district court's judgment is affirmed. Rule 9(b)(3), Rules of the Sixth Circuit.

ENTERED BY ORDER OF THE COURT

s/Leonard Green, Clerk

FILED AUGUST 14, 1998
LEONARD GREEN, CLERK

App. B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT HEIDISCH,

Plaintiff, No. 96-CV-73677-DT

v

HON. GEORGE E. WOODS

FORD MOTOR COMPANY,

Defendant.
_____/

**JUDGMENT FOR DEFENDANT**

AT A SESSION of said court, held in the United States Courthouse, in the City of Detroit, State of Michigan, on the 5th day of August, 1997.

PRESENT: THE HONORABLE GEORGE E. WOODS
United States District Judge

This Court having entered an order granting defendant's motion for partial reconsideration of the Order Granting In Part And Denying In Part Defendant's Motion for Summary Judgment; now, therefore,

IT IS HEREBY ORDERED that judgment be, and hereby is, entered for defendant.

IT IS FURTHER ORDERED that plaintiff's complaint is DISMISSED.

So ordered.

/s GEORGE E. WOODS
GEORGE E. WOODS
U.S. DISTRICT JUDGE

App. C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT HEIDISCH,

Plaintiff, No. 96-CV-73677-DT
v HON. GEORGE E. WOODS

FORD MOTOR COMPANY,

Defendant.
_____/

**ORDER GRANTING DEFENDANT'S MOTION FOR RECONSIDERATION**

AT A SESSION of said court, held in the United States Courthouse, in the City of Detroit, State of Michigan, on the 5th day of August, 1997.

PRESENT: THE HONORABLE GEORGE E. WOODS
United States District Judge

This matter having come before the Court on defendant's motion for partial reconsideration of the Court's Order Granting in Part and Denying in Part is Motion for Summary Judgment;

The Court having reviewed the pleadings submitted herein, and being otherwise fully informed in the matter;

The Court holds that defendant's motion for reconsideration is GRANTED for the reasons set forth in the opinion that follows.

## I. BACKGROUND

Plaintiff Robert Heidisch filed this action against his former employer defendant Ford Motor Company ("Ford"), alleging that defendant violated the Americans With Disabilities Act (ADA), 42 U.S.C. 12101 et seq.

The Court awarded summary judgment to defendant plaintiff's hostile environment claim but denied summary judgment to defendant on plaintiff's claim that defendant failed to provide him with reasonable accommodations. Defendant now moves the Court to reconsider the issue of whether it provided a reasonable accommodation.

## II. LEGAL STANDARD

A motion for reconsideration is governed by Local Rule 7.1(h), which provides in pertinent part:

> Generally, and without restricting the discretion of the Court, motions for rehearing or reconsideration which merely present the same issues ruled upon by the Court, either expressly or by implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the Court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

E.D. Mich L.R. 7.1(h).

## III. ANALYSIS

Under the Act, reasonable accommodation may include transfer to any "vacant position" the employer needs to fill, 42 U.S.C. 1211(9)(b), however, the ADA does not require an employer to create new positions for disabled employees. Monette v. Electronic Data Sys. Corp., 90 F.3d 1173 (6th Cir. 1996). Nor is an employer required to permanently assign an employee to a temporary position that he previously performed. See Shiring v. Runyon, 90 F.3d 827 (3d Cir. 1996) (holding that employer need not create a position for employee with a disability by making a temporary position permanent).

In assessing defendant's argument that the Court must grant it summary judgment because defendant had no obligation to place plaintiff in "make work temporary jobs," the Court reviewed the affidavit of Robert Brooks, Unit Supervisor of Labor Relations at For Motor Company's Van Dyke Plant. Brooks stated that plaintiff was "given numerous temporary job duties [after he suffered from Carpel Tunnel Syndrome] which were created for him by the Van Dyke Plant." Affidavit at Para. 4 (emphasis added).

The Court found the affidavit inadequate to support the award of summary judgment to defendant for several reasons: (1) although defendant maintained that plaintiff was assigned on a temporary basis to the jobs he performed for almost five years, Brooks

did not state that defendant never permanently assigned employees to the positions plaintiff worked; and (2) the affidavit was unclear as to whether defendant created the duties performed by plaintiff merely to accommodate his restrictions inasmuch as it appears that these jobs needed to be performed. 1

In its motion for reconsideration, defendant supplied a supplemental affidavit in response to the Court's concerns. The supplemental affidavit clarified Brook's earlier statement. Defendant maintains that implicit in Brook's statement that the job duties were created for plaintiff because of his medical restrictions is the notion that these jobs were not "vacant positions" to which defendant permanently assigns employees. In his supplemental

---

1 Defendant also argues that the Court improperly placed the burden on defendant to show that there were no vacant positions. The Court disagrees. Because plaintiff proceeds pro se the Court is obliged to construe his pleadings liberally. Further, in the absence of evidence to the contrary, the fact that plaintiff worked for five years performing "temporary" job duties creates an inference in his favor that the tasks he performed were not busy work and that a vacant position existed or arose during this time frame. In light of the additional evidence provided by defendant, no such inference arises.

affidavit, Brooks explicitly asserts that none of the duties performed by plaintiff constituted a position. Brook's Affidavit at para. 4. Those positions offered to plaintiff which constituted vacant permanent positions were nixed by plaintiff because they "aggravat[ed] his carpal tunnel syndrome." Id. at pra 5. The job tasks actually performed by plaintiff were either marginal functions of another employee's position, one-time-only projects or the collective duties of all plant employees. Id. at para. 6. Moreover, plaintiff's restrictions prohibited him from performing all of the functions that are part and parcel of a cleaner position. Id. at paras. 6-11. Plaintiff's deposition testimony supports Brook's statement. Deposition of Heidisch, at p. 64.

In light of this additional evidence and clarification, the Court concludes that there is no genuine issue for trial on the issue of whether defendant reasonably accommodated plaintiff. Defendant satisfied its duty under the Act.

**V. CONCLUSION**

For the reasons stated, defendant's motion for reconsideration is GRANTED as to plaintiff's claim that defendant failed to reasonably accommodate him. Accordingly, plaintiff's complaint is DISMISSED in its entirety.

So Ordered.

/s GEORGE E. WOODS
GEORGE E. WOODS
U.S. DISTRICT JUDGE

App. D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT HEIDISCH,

Plaintiff, No. 96-CV-73677-DT

v

HON. GEORGE E. WOODS

FORD MOTOR COMPANY,

Defendant.
_____/

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

AT A SESSION of said Court, held in the United States Courthouse, in the City of Detroit, State of Michigan, on the 12th day of June, 1997.

PRESENT: THE HONORABLE GEORGE E. WOODS
United States District Judge

This matter having come fore the Court on defendant's motion for summary judgment [Document No. 5]'

The Court having reviewed the pleadings submitted herein, and being otherwise fully informed in the matter;

The Court holds that defendant's motion for summary judgment is GRANTED in part and DENIED in part for the reasons set forth in the opinion that follows.

I. FACTS

Plaintiff Robert Heidisch worked for defendant Ford Motor Company ("Ford") from 1984 through February, 1995. Prior to 1990, plaintiff worked in various positions in the "assembly" job classification; the lasts job he performed was the brake drum job. The job involved lifting fourteen pounds, inserting pal nuts approximately 425 times per day. After plaintiff became afflicted with Carpal Tunnel Syndrome ("CTS"), he could no longer work the "brake-drum" job because of medical restrictions. Plaintiff was on a medical leave of absence from February 1990 until June 1990. When plaintiff returned to work, Ford gave him different job duties until it laid-off plaintiff in February of 1994. The temporary jobs involved custodial tasks, acting as a guide for cement trucks coming into the plant for a construction project, making safety cards to place on machinery, inspecting parts, placing cardboard liners in baskets, test driving cars, filing blueprints, sorting invoice cards and assembling chalk boards. Several of the jobs to which plaintiff was assigned aggravated his CTS. Once plaintiff objected to the tasks, defendant reassigned plaintiff.

In November 1994, plaintiff filed a charge of discrimination with the EEOC. In February 1995, defendant placed plaintiff on a no-work-available layoff status. He filed a complaint in this Court on August 7, 1996, alleging that defendant violated the Americans With Disabilities Act (ADA), 42 U.S.C. 12101 et seq. Although the complaint does not

allege specific theories upon which plaintiff proceeds, it appears that plaintiff claims that defendant failed to accommodate him and that defendant harassed him because of his disability. 1

Defendant now moves for summary judgment on several grounds. First, defendant contends that plaintiff has not presented evidence that he was a qualified person who could perform the essential functions of his job. Second, defendant argues that plaintiff cannot show that defendant failed to provide him with reasonable accommodations. Third, defendant maintains that plaintiff cannot establish a claim under the ADA on the basis of harassment or hostile environment.

## II. LEGAL STANDARD

Pursuant to Fed. R. Div. Proc. 56(c), a motion for summary judgment is to be granted only if the evidence indicates that no genuine issue of material fact exists. To avoid summary judgment, the opposing party must have set out sufficient evidence in the record to allow a reasonable jury to find for him at trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Matsushita Elec. Ind. Co. v Zenith Radio Corp., 475 U.S. 574 (1986).

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1 The Court construes plaintiff pleadings liberally because he is proceeding pro se. Williams v. Browman, 981 F.2d 901, 903 (6th Cir. 1992).

The sufficiency of the evidence is to be tested against the substantive standard of proof that would control at trial. Anderson, 477 U.S. 242. The moving party has the burden of showing that there is an absence of evidence to support the non-moving party's case. Celotex v. Catrett, 477 U.S. 317, 325 (1986). "[A] party opposing a properly supported motion for summary judgment may not rest on mere allegations or denials of his pleading, but must set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 256. In disposing of a motion for summary judgment, this Court must consider the evidence in the light most favorable to the nonmoving party, but may weigh competing inferences for their persuasiveness. Matsushita, 475 U.S. at 574.

## III. ANALYSIS

To state a claim of disability discrimination under the American with Disabilities Act, plaintiff must show that he is a disabled person within the meaning of the Act; that he is qualified with or without a reasonable accommodation to perform the essential functions of his job and that he was discriminated against because of his disability. 42 U.S.C. 12111(8), 12112(a).

For purposes of this motion, defendant concedes that plaintiff has a disability. Defendant maintains that plaintiff cannot establish either of the other elements of a prima facie case.

A. Failure to Accommodate

To determine if plaintiff was an "otherwise qualified individual," the Court engages in a two step analysis. First, plaintiff must demonstrate that he satisfied the prerequisites for the brake drum job. Second, plaintiff must show that he can perform the essential functions of the brake drum job, either with or without reasonable accommodation. 42 U.S.C. 12111(8); 29 C.F.R. app. 1630.2(m); Bultemeyer v. Fort Wayne Community Sch., 100 F.3d 1281, 1284 (7th Cir. 1996). A reasonable accommodation is "any change in the work environment or in the way things are customarily done that enables an individual with a disability to enjoy employment opportunities." 29 C.F.R. app. 1630.2(o)(1995).

In this case, plaintiff does not contend that he could perform his brake-drum job even with an accommodation. Rather, plaintiff contends that defendant should have continued to assign him to temporary jobs that plaintiff was able to perform.

Although the Act provides that reasonable accommodation may include transfer to any "vacant position" the employer needs to fill, 42 U.S.C. 1211(9)(b), the ADA does not require an employer to create new positions for disabled employees. Monette v. Electronic Data Sys. Corp., 90 F.3d 1173 (6th Cir. 1996). Nor is an employer required to permanently assign an employee to a temporary position that he previously performed. See Shiring v.

Runyon, 90 F.3d 827 (3d Cir. 1996) (holding that employer need not create a position for employee with a disability by making a temporary position permanent).

Accordingly, defendant concludes that the Court must grant it summary judgment on plaintiff's contention that defendant should have continued to place him in "make-work temporary jobs" because the theory is not supported by case law. In addition, defendant relies on the affidavit of Robert Brooks, Unit Supervisor of Labor Relations at Ford Motor Company's Van Dyke Plant, to support its position. Brooks contends that plaintiff was "given numerous temporary job duties [after he suffered from CTS] which were created for him by the Van Dyke Plant." Affidavit at para. 4 (emphasis added).

Despite defendant's argument, the Court is not satisfied that defendant has met its burden. "Reassignment is appropriate when no accommodation would enable the plaintiff to remain in his current job, he is qualified (with or without reasonable accommodation) for another position, and that position is vacant within a reasonable time." Haysman v. Food Lion, Inc., 893 F.Supp. 1092, 1104 (S.D. Ga. 1995). Although defendant maintains that plaintiff was assigned on a temporary basis to the jobs he performed for almost five years, defendant has not indicated that it never permanently assigned employees to the positions plaintiff worked. There is no evidence that defendant created the duties performed by plaintiff merely to

accommodate his restrictions. It appears that these jobs needed to be performed. These facts distinguish this case from the cases relied upon by defendant to show that summary judgment is appropriate. Accordingly, on the record before this Court, there remains a genuine issue of material fact as to whether defendant reasonably accommodated plaintiff, and defendant's motion as to this claim is denied.

**B. Harassment under the ADA**

Next, plaintiff contends that the comments and conduct of his supervisors and co-workers constituted harassment on the basis of his disability. Although the Sixth Circuit has not analyzed whether the hostile environment claim brought under Title VII applies to an ADA action, other courts have determined that harassment is actionable under the ADA. See Fritz v. Mascotech Automotive Sys. Group Inc., 914 F.Supp. 1481, 1492 n.6 (E.D. Mich. 1996), citing Haysman v. Food Lion, Inc., 893 F.Supp. 1092, 1106-07 (S.D. Ga. 1995).

> The ADA prohibits discrimination in the terms conditions or privileges of employment. 42 U.S.C. 12112(a). Referring to identical language in Title VII, the Supreme Court stated: harassment that is sufficiently severe or pervasive to alter the conditions of employment and create an abusive working environment, is actionable under Title VII because it

affects a term, condition or privilege of employment.

Haysman, 893 F.Supp. at 1106 (internal quotations and punctuation omitted).

Accordingly, this Court finds that plaintiff may advance a claim under the ADA based upon a hostile environment. Common sense requires this conclusion. If the ADA prohibited an employer from firing a qualified individual because of his disability but allowed that employer to harass the qualified individual into quitting, the purposes of the statute would be eviscerated.

To state a claim for discrimination through harassment, a plaintiff must show that he is a member of a protected class, that he has been harassed, that the harassment is based on the protected characteristic and that it affected a term or condition of employment. Id. at 1107.

Here, plaintiff lists a series of incidents he believes support his claim that defendant harassed him during the time he performed temporary duties. The Court, for purposes of this motion, relies on plaintiff's rendition of the facts.

Plaintiff's allegations can be categorized as complaints about his supervisor; complaints about being treated differently than other employees; and general complaints about conditions of his employment. The Court reiterates these allegations below.

Plaintiff asserts that his supervisor, Mark Denske, gave him twenty minutes for his breaks when he was entitled to twenty-two minute breaks. Denske also referred to plaintiff as one of his "projects" and required plaintiff to perform a visual inspection job without propping up his feet and stretching his arms.

Defendant reassigned plaintiff to the third shift. Defendant neglected to give plaintiff a company jacket at the time everyone else received one. Further, on two occasions, plaintiff did not receive his check with the other people in the department. On those occasions, plaintiff had to go to the office to get his check. Once plaintiff had to wait until the following day to get his check.

According to plaintiff, on one occasion he observed two supervisors smiling and giggling and thought that they were laughing at him. Plaintiff had to wait in the cafeteria when he completed his duties until Labor Relations identified additional work for him to perform, a situation that he asserts created stress. When plaintiff returned from a medical leave of absence, he was placed in a work classification that paid 29 cents less per hour.

Defendant's first argument is that plaintiff's claim of harassment must fail regardless of the facts as alleged by plaintiff because plaintiff was not a "qualified individual with a disability." The Court disagrees. First, the Court has not found as a matter of law that

plaintiff was not a qualified individual with a disability. Secondly, even if defendant had no obligation to continue plaintiff's employment in a temporary position, once defendant placed plaintiff in the temporary position, the ADA provided the same protection to plaintiff as any other covered employee. Haysman, 893 F.Supp. at 1107-08.

Nevertheless, even assuming that plaintiff is a member of a protected class, the Court finds that the severity and pervasiveness of the harassment, as a matter of law, do not rise to the level necessary to support a violation of the ADA. Many of the incidents upon which plaintiff relies to support his harassment claim were corrected in a short period of time through the grievance procedure. Plaintiff's lower pay, his shortened break periods and his designation on one occasion as a "project" were all the subject of successful grievances on the part of plaintiff. Accordingly, these incidents were not pervasive.

Harassment is actionable only "when the workplace is permeated with discriminatory intimidation, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment." Harris v. Forklift Sys., Inc., 510 U.S. 17, 22 (1993) (internal citations and quotations omitted). See also, Black v. Zaring Homes, Inc., 104 F.3d 822 (6th Cir. 1997) (finding sex-based comments about breasts made during bi-weekly meetings were insufficient to create objectively

hostile work environment); Crawford v. Medina General Hosp., 96 F.3d 830 (6th Cir. 1996) (finding that comments that "old people should be seen and not heard" and that women should retire by age 55 were offensive but not "physically threatening or humiliating" were insufficient to create a hostile working environment). 2

In this case, the fact that plaintiff was a temporary employee working in different departments explains the fact that he did not receive his check with other department workers. Defendant corrected the problem once plaintiff brought it to the attention of the Labor Relations Department. Similarly, once plaintiff complained to the Labor Relations Department about the fact that he did not receive a company jacket, he received his jacket. The fact that plaintiff was not a permanent employee in any one department negates any inference that these incidents

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2 Plaintiff does allege several incidents involving physical contact: (1) the Plant Manger (sic) bumped his side when plaintiff and the plant manager were passing through the door at the same time; (2) a Supervisor, Dave Merlo, bumped plaintiff's side, and (3) a supervisor pulled the back of a chair on which plaintiff was seated and told him to be careful not to fall backward. These events taken individually or cumulatively do not create an atmosphere of physical intimidation sufficient to satisfy the standards for a hostile environment claim.

occurred to harass plaintiff. Nor were these incidents significant enough for a jury to find that they altered a term, condition or privilege of employment. Finally, plaintiff has presented no evidence to show a connection between the occurrences of these incidents and his status as an individual with a disability.

Accordingly, the Court GRANTS summary judgment to defendant on the harassment claim.

**V. CONCLUSION**

For the reasons stated, defendant's motion for summary judgment is DENIED as to plaintiff's claim that defendant failed to reasonably accommodate him and GRANTED as to plaintiff's claim brought under the hostile work environment doctrine.

So Ordered.

s/ GEORGE E. WOODS
GEORGE E. WOODS
UNITED STATES DISTRICT JUDGE

App. E

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No. 97-1879

ROBERT HEIDISCH,

Plaintiff-Appellant,

v

FORD MOTOR COMPANY,

Defendant-Appellee.

FORD MOTOR COMPANY'S MOTION TO STRIKE PLAINTIFF'S REPLY BRIEF

1. Plaintiff filed a reply brief in this case on October 31, 1997.

2. Plaintiff's brief recites a variety of stories that purportedly support his claims that were not presented to the trial court below and thus are not part of the record on appeal. In fact, Plaintiff failed to raise many of these stories at his deposition and thus, are not only not in the record, but completely new to Ford Motor Company's counsel.

3. The only evidence in the record in this case are the portions of Plaintiff's deposition attached to Ford Motor Company's Motion for Summary Judgment and affidavits of Ford Motor Company Labor Relations Supervisor Robert Brooks, attached to Ford's Motion for Summary Judgment and Ford's Motion for Reconsideration.

4. Not only did Plaintiff fail to submit any documents supporting his claim in his Response to Summary Judgment, but he failed to even recite any factual support for his claim in his Response.

5. Thus, Plaintiff failed to present any facts supporting his claim to the trial court.

Wherefore, Ford Motor Company respectfully requests that this Court strike Plaintiff's reply brief because it is based entirely on facts not in the record.

s/Sarah G. Tomai
BY: SARAH G. TOMAI
Ford Motor Company
Three Parklane Boulevard
Dearborn, Michigan 48126
(313)337-2671

Dated: November 5, 1997

App. F

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ROBERT HEIDISCH,

Plaintiff-Appellant,

v No.97-1879

FORD MOTOR COMPANY,

Defendant-Appellee.
_____/

**PRO SE APPELLANT'S RESPONSE TO FORD MOTOR COMPANY'S MOTION TO STRIKE PLAINTIFF'S REPLY BRIEF**

1. Plaintiff-Appellant admits Defendant-Appellee's paragraph 1.

2. Plaintiff-Appellant neither admits nor denies Defendant-Appellee's paragraph 2, but asserts that Plaintiff-Appellant only answered the questions as asked by Ford Motor Company's (Company) counsel. Plaintiff-Appellant was subpoenaed to testify at this deposition at the request of the Company; therefore, Plaintiff-Appellant believed he was not in a position to raise any stories and that he was present at the request of the Company to answer their questions. Plaintiff-Appellant believes that the Company's counsel has had copies of his documentation since December, 1996, so it is Plaintiff-Appellant's contention that these so called stories should have been known to Defendant-Appellee.

3. Plaintiff-Appellant denies Defendant-Appellee's paragraph 3 for the reason that the Company and the District Court have copies of his documentation which support Plaintiff-Appellant's issues.

4. Plaintiff-Appellant denies Defendant-Appellee's paragraph 4.

5. Plaintiff-Appellant neither admits nor denies Defendant-Appellee's paragraph 5 and leaves Defendant-Appellee to their proofs. However, Plaintiff-Appellant believes that the facts asserted in his reply brief are contained within the documentation in the court record and in the Company's possession.

WHEREFORE, Plaintiff-Appellant respectfully requests this Honorable Court deny Defendant-Appellant's request to strike Plaintiff-Appellant's reply brief, or in the alternative, to remand the case back to the District Court in order for Plaintiff-Appellant to include any information that may not be properly in the trial court record at this time due to the fact that Plaintiff-Appellant is proceeding Pro Se and is unfamiliar with the practice and procedure in Federal Court.

DATED: November 11, 1997

s/ROBERT HEIDISCH
ROBERT HEIDISCH
Plaintiff-Appellant
Pro Se